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AZ Republic 5 July 2006 Biz Section front page



The Vistancia community going up in Peoria represents a big opportunity for voice and high-speed Internet providers.

Tiny telecom wrecks builder deal with Cox

Unraveling proves windfall for Accipiter

By Ken Alltucker
THE ARIZONA REPUBLIC

It was such a sweetheart deal, even Ma Bell would blush.

Cox Communications struck a profit-sharing pact with developer Shea-Sunbelt to ensure that no other phone company would sell voice or high-speed Internet service to the 17,000-home Vistancia community in Peoria.

The deal hardly seemed necessary. Cox boasts hundreds of thousands of Arizona customers, statewide political clout and strong ties with developers across the Valley.

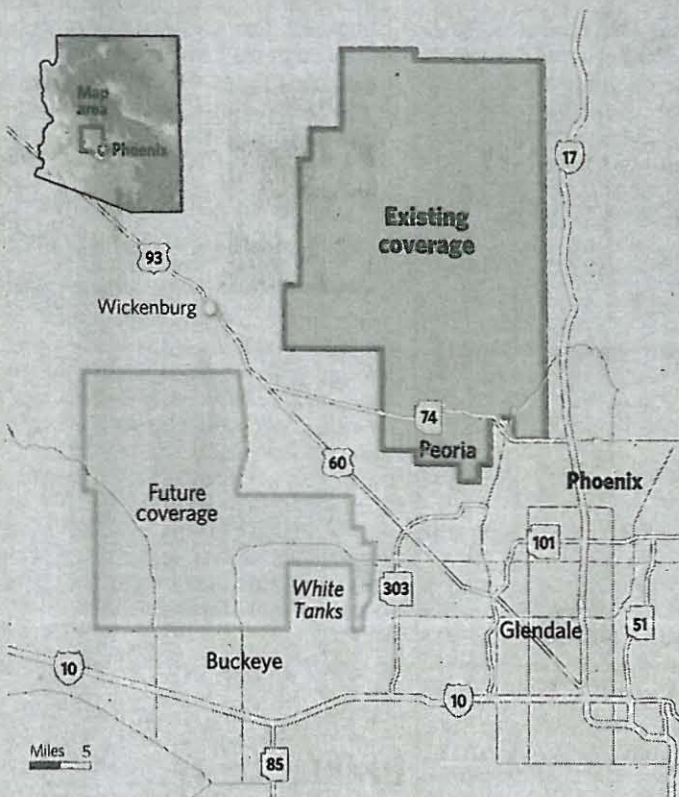
Its speck of a competitor, Accipiter Communications, counts fewer than 100 customers in a territory so barren that coyotes outnumber people.

Yet the deal eventually brightened the prospects of the small company with a lofty goal of connecting calls throughout 1,100 square miles of Sonoran Desert.

The Cox-Shea deal triggered inquiries from the Department of Justice antitrust division and Arizona's attorney general. State regulators have recommended a \$2 million fine. And a lawsuit settlement with Cox and Shea gave Accipiter \$1 million and access to Vistancia, including Cox's pricey infrastructure leading to

Accipiter's growth

Accipiter will add a territory of about 400 square miles abutting the White Tank Mountains to go along with its existing 700-square-mile territory. The small phone company has received preliminary approval for a \$21.2 million loan to build a new fiber-optic line near the White Tanks.



See ACCIPITER Page D2

Source: Accipiter

MARK WATERS/THE ARIZONA REPUBLIC

Tiny telecom wrecks build

ACCIPITER

Continued from D1

the development.

Now, using Cox's cash and equipment, Accipiter has big plans for Vistancia and other communities popping up on the Valley's western fringes.

Growth is spilling over into Accipiter's territory near the White Tank Mountains with master-planned communities that will bring thousands of homes. Accipiter is counting on that growth to pick away customers from the Valley's telecom powerhouses, Cox and Qwest.

"This is a significant opportunity for Accipiter," said Charlie Gowder, Accipiter's chief executive officer. "This is what we've been looking for."

Banking on growth

Growth is key for Accipiter, because the company can't get much smaller.

It counts just four employees, 80 customers and 200 lines in the Lake Pleasant and Castle Hot Springs areas.

The company was formed more than a decade ago after two of its founders, Lewis van Amerongen and Phil Sotel, were amazed by the call quality on their remote ranch in Colorado. They thought that providing similar service in a growing area could be profitable.

Along with former Southwestern Bell engineer and wireless entrepreneur David Sharbutt, the trio started Accipiter and secured the rights to serve nearly 700 square miles in northern Maricopa and southern Yavapai counties.

The company's growth has been slow but calculated. It has plodded along, investing more than \$5.4 million in the latest fiber-optic equipment.

Accipiter knows it will never rival Qwest or Cox, at least when measured by numbers of customers or financial strength. That's not its mission.



Charles
Gowder



P.K.
Sotel



David
Sharbutt



Lewis van
Amerongen

Rural telephone companies such as Accipiter are the Buicks of this text-message era of telecommunications. They're not sexy, but they provide service for the shrinking percentage of Americans who choose the hinterlands over city or suburban living.

The federal government has established grants and loan programs for rural phone companies to ensure that people who live in such areas have access to phone service. State regulatory agencies assign territories to companies, which become responsible for providing telephone service.

As van Amerongen and Sotel learned more about the generous subsidies for rural carriers, the idea of launching such a company in the Arizona desert didn't seem like such a gamble.

The funds could help offset the costly job of building the infrastructure needed to run a phone company. The payoff would come when Phoenix's growth reached Accipiter's doorstep, giving it thousands of potential customers.

"We were amazed by the business model," said Sotel, Accipiter's general counsel. "We started it because we thought there would be growth in Phoenix, and we could make some money if we're patient."

Shut out of Vistancia

As Phoenix's growth machine continued to churn desert into dollars, Accipiter thought it was poised to wire its first major project: the Vistan-

cia community in Peoria.

In 2002, developer Shea-Sunbelt was crafting its plan for the massive community, and a key part of that was selecting a company to provide telephone, cable and high-speed Internet for up to 45,000 residents.

Accipiter soon learned that the developer had no intention of selecting the small company.

Shea-Sunbelt was negotiating a profit-sharing pact with Cox. Under the deal, the more customers Cox could sign up, the more money would be funneled back to the developer.

Notes and e-mail exchanges between employees of Cox and the developer talked of a strategy to exclude competitors. "Shea can guarantee to keep out competition. Cox can purchase the knowledge. What is it worth to us?" one message said.

Under the agreement, the developer gained control of the public right of way, called an easement. These easements, usually controlled by a city or town, allow communications companies to install the wires needed to provide service.

In July 2003, Peoria took the unprecedented step of handing over the easement to the developer. So at Vistancia, Shea-Sunbelt could decide who would provide telecommunications service.

Sotel and other representatives of Accipiter became aware of the arrangement after plowing through public records. They urged Peoria to reject the private easement, but the city approved it.

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er's profit deal with Cox

So Accipiter saw the possibility that nearly a decade of planning could have been crushed. If Cox and Shea-Sunbelt could exclude competitors, why wouldn't every developer in the Valley follow?

"We weren't sure what to do next," Sotel said. "There would be no competition."

Fighting back

Accipiter's principals mulled their next move.

Although Accipiter is small, the owners' business careers cut across many disciplines, including oil and gas, hostile takeovers, telecommunications and transportation.

Van Amerongen spent more than 25 years in the world of leveraged buyouts. Among his firm's deals are \$6.9 billion worth of buyouts involving firms such as Syracuse China, Ecko Housewares, Wells Aluminum and Budget Rent-a-Car.

Sotel's legal career includes a stint representing several multinational corporations as well as Dallas' Hunt family, which once attempted to corner the world silver market.

Sharbutt has been a heavyweight in his own right. He guided wireless provider Alamosa PCS from an initial public offering in February 2000 through its sale to Sprint this year. The deal netted Sharbutt, as Alamosa's chief executive officer, more than \$25 million.

Rather than let the Vistancia deal go unchallenged, they filed a lawsuit in Maricopa County Superior Court and a complaint with the Arizona Corporation Commission.

The court case has been settled. Shea and Cox agreed to pay Accipiter \$1 million and allow it to compete in Vistancia. The Corporation Commission case is ongoing. The state recommended a \$2 million fine; Cox has indicated that it will argue that the fine should be reduced or eliminated.

State regulators want to

scrutinize the types of special deals that developers and communications companies reach. The main thing regulators want to eliminate: profit-sharing agreements that encourage anti-competitive steps.

Up next: More customers

With this battle complete, Accipiter has zeroed in on its immediate goal: capitalizing on the West Valley's growth.

Accipiter is awaiting final approval from the Corporation Commission to provide service near Buckeye, a wide looping territory abutting the White Tank Mountains.

Accipiter has received initial approval for a \$21.2 million, low-interest loan through the U.S. Department of Agriculture's rural utilities service. The company will use the loan to build about 130 miles of fiber-optic line capable of delivering voice, high-speed data and video service to thousands of homes. Some estimates are that developments planned along Sun Valley Parkway, once known as the Road to Nowhere, will be home to 500,000 or more residents by 2050.

It would seem like a golden opportunity for Qwest, the Valley's major land-line phone company, which has grappled with customers switching over to Cox or wireless competitors.

But for now, Qwest is satisfied with giving much of the territory up to Accipiter.

"A lot of these smaller companies can (build new lines) be-

cause they get help from the federal government," said Jeff Mirasola, a Qwest spokesman. "We're not in the business of giving up lines, but it's one of those cases where we had to make a decision. We have a good relationship with Accipiter."

Gowder and Sotel know that developers will be reluctant to rely solely on Accipiter to serve a large area because of the company's size. Still, retailers, government agencies and others will need phone service in the rapidly expanding area. And as the company grows, more developers will notice.

"We feel once they know Lew, David and myself and the types of backgrounds we have, people will be more willing to do business with us," Sotel said.

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